

In this issue we look at

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Editor's welcome

Hello and welcome. This will be our last Employers' Update for 2016. As ever, at this time of the year, we explain the rules about presents and parties – the introduction of new rules for trivial benefits has certainly simplified the treatment of small presents for employees.

We also discuss the rules surrounding payments to Non-Executive Directors and the impact IR35 has on these payments.

We've introduced a new feature called 'The Man in the Pub' because we've all heard his expert opinion, and in this issue we discuss whether a tax-free lump sum can be paid to employees

when they leave employment.

Finally, we've listed our Top 10 issues that crop up in employer compliance checks and we give you a heads up about salary sacrifice changes. We will be sending out a special e-shot to explain the changes once the detailed guidance has been published, on 5 December.

It just remains for us to wish you all a Merry Christmas and all the best for 2017!



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End of the Christmas turkey tax

In the Budget this year, HMRC finally put a figure on what can be regarded as a trivial gift- £50 including VAT. Employers have traditionally struggled with tax free gifts for employees as HMRC would never define what was trivial. Their usual example was a turkey or a bottle of wine at Christmas.

That has now all changed and as long as the gift isn't cash or a reward for service, employers can give their staff a gift of up to £50 without the need to account for payroll taxes or benefits in kind tax.

The gift must be in recognition of a life event such as a birth, marriage, illness, etc, Christmas or other religious event. There is no limit on the number of gifts an employee can receive in a year unless they are a director or are connected to a director in which case the maximum per annum is six gifts.

If you have been giving retail vouchers to your workforce as a present each Christmas then, prior to this year, this was a benefit in kind. Many employers

chose to pay the tax on this benefit by using a PAYE Settlement Agreement. This year, provided the voucher cannot be exchanged for cash and is under £50 there is no tax or NICs to pay.

Those party rules

Every year we are asked by our clients to remind them what the tax exemptions relating to staff parties are.

- Maximum spend- £150 per person attending, not per employee.
- The Spend includes everything i.e transport, food, drink, accommodation, entertainment and VAT.
- The event must be open to all staff, or all staff at a particular location. Regional offices can organise their own party, but all employees in your business must be able to attend an event.
- The event must be an annual event. You can have more than one annual event. It doesn't have to be the same annual event – one year you could go to the races, another year you could have a summer barbeque.

- If you have events at more than one location eg two Christmas parties for the two regional offices you average the total cost of both Christmas parties over the total number of attendees at both parties.
- If you go over £150 on a single event the entire amount is taxable as a benefit in kind on the employees who attend (or you can pick up the tax bill through a PAYE Settlement Agreement).
- If you have more than one annual event (eg summer and winter) you have to spread the £150 between the events. If the average cost per head for the summer event was £90 and the winter one cost £70 per head then you can choose which event is covered by the exemption. In this example the £70 is taxable on the employee attendees as a benefit in kind.



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Tax and the Non-Executive Director



Over recent years the number of Non-Executive Directors (NEDs) in UK companies has increased significantly. In terms of objectivity, experience and strategic input many businesses find the presence of NEDs to be invaluable. However, as we would expect, as the numbers have increased, so has the level of attention from HMRC – they know that paying NEDs is a complex area and that PAYE errors are common.

Directors, whether executive or non-executive, are regarded for tax purposes as “office holders” and so the starting point is that their fees (and, in many cases, their expenses) are subject to PAYE and NIC via the payroll. Importantly, this is the case even where the NED is non resident in the UK and travels here to attend board meetings etc. Unfortunately in the past there was a perception that NEDs could invoice for their fees and be paid gross, but HMRC’s view is that this has never been the case.

Because of this, a practice developed whereby the NED would provide their services (often to several different companies) via a Personal Service Company (PSC). The PSC would invoice the company for the services of the NED and the invoice would be paid gross. Again, HMRC have never accepted that this was correct. In most cases the NED personally rather than the PSC was appointed to the director role, and so HMRC considered that it was the responsibility of the company to operate PAYE & NIC.

The position was clarified in April 2013

when the IR35 rules relating to PSCs were extended to include NEDs. Now, if the NED is personally appointed as a director or if the PSC is appointed as a corporate director but the NED personally performs the directorship duties, the IR35 rules must be applied. This actually helps the company, because the onus to operate PAYE and NIC is placed firmly on the PSC – it is obliged to deduct and account for tax and NIC on all gross payments received in respect of the NED’s duties. However, beware – where the NED is appointed personally HMRC may still argue that the company has the deduction and reporting requirements.

The new rules also give HMRC the power to scrutinise whether any fees received for consultancy should actually be reclassified as being for directorship duties. It is fairly common practice for a NED (or their PSC) to have separate contracts with a company – one, often for a relatively low fee, for the duties of directorship (attendance at board meetings etc.) and another for the provision of consultancy services. This might happen perhaps where the NED has industry specific technical skills or expertise and the company may wish to procure advice from them in the same manner as if they were to engage an external consultant. All of the usual tests of self employment would apply to the second contract. It is important to ensure that consultancy is legitimately provided on a self employed basis and that there is a clear separation from the directorship duties, otherwise HMRC will seek PAYE and NIC on the whole package.

Very often the NED will live a considerable distance from the company and will claim travelling, subsistence and accommodation expenses (typically included within their invoice) for attendance at board meetings etc. The rules here are straightforward – expenses for travelling to and from work are taxable and, as an office holder, the company premises are deemed to be the workplace for the NED. Occasionally a company will attempt to circumvent this by holding board meetings away from the company premises, perhaps at a local hotel. Unfortunately this is unlikely to succeed. Unless the venue is a significant distance from the company premises the travel will still be treated as being similar to the “Ordinary Commute” for tax purposes and the expenses will be taxable.

To conclude, there is no doubt that NEDs are a valuable and positive asset to a business. However, it is vital that care is taken over the tax position. On the basis that prevention is always better than cure it would be advisable to get in touch before the appointment is made to ensure that agreements are properly structured and that the company isn’t exposing itself to liabilities.



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The man in the pub talks about...

Termination payments

Tax doesn't usually fall into the realm of myths and legends, yet there are some perceived truths that definitely qualify as an urban myth. One of these is the belief that an employee can be paid up to £30,000 free of tax and National Insurance if he or she leaves employment, regardless of the circumstances. This belief is mistaken because it only looks at the amount being paid to an employee and not at what the payment relates to. Generally speaking, payments of compensation do qualify for the £30,000 tax and NICs exemption. But, some payments in lieu of notice, (PILONs) do not qualify, even though they are compensatory in nature, because they are either a written or implied part of the employment contract. Not surprisingly, it is easy for employers to get this wrong.

Because of this, HMRC will always check termination payments if they carry out an employer compliance check. They will ask for details of how the payment has been made up, to identify those elements of the payment that are exempt from tax and NICs and those elements that are liable to these charges.

Proposed changes from April 2018

Termination payments made after 5 April 2018 will be categorised into payments relating to the employment



contract and payments that relate to the actual termination. A payment will be categorised as relating to the employment contract even if it is made during a notice period that is not being worked, so PILONs will all now be liable to tax and NICs.

The £30,000 exemption to tax and NICs will remain but a new charge to employer's NICs will be introduced on payments over £30,000.

PAYE and NICs remain chargeable on restrictive covenants and holiday pay as these are categorised as relating to the employment contract.

Other payments that are exempt from PAYE and NICs

There are other termination payments that may be made free of tax and NICs even if the payment is more than £30,000. Following consultation, the payments below have been left in place:

- death, disability or injury to the employee, but the new legislation will state that this exemption doesn't apply to payments for injury to feelings
- under a tax exempt pensions scheme
- to a registered pensions scheme
- for liabilities and indemnity insurance
- to HM Armed Forces
- by a foreign government
- in respect of certain legal costs.

There was one further change though, which was to remove the tax exemption from termination payments made to employees working in the UK but who have worked for their employer outside of the UK for more than 15 years in the last 20 years.

As ever, if you are thinking about making a termination payment, please do get in touch.

Changes from April 2018	
PILONs	All PILONs will be liable to PAYE and NICs
Bonuses earned during the notice period, even if the employee didn't work their notice	Liable to PAYE and NICs
All other post-employment payments that would have been liable to PAYE & NICs if the employee had worked their notice period	Liable to PAYE and NICs
Redundancy payments – statutory and non-statutory	<ul style="list-style-type: none"> • Exempt from PAYE and NICs up to £30,000 • Liable to PAYE and employer's NICs on payments over £30,000
Other payments that relate to the termination of the employment	<ul style="list-style-type: none"> • Exempt from PAYE and NICs up to £30,000 • Liable to PAYE and employer's NICs on payments over £30,000 <p>NB redundancy payments and other payments relating to the termination of the contract should be added together as the £30,000 exemption applies to all of the payments</p>



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HMRC compliance review - top 10 issues

We are often asked to carry out Employer Compliance Healthchecks or to represent clients who are having an Employer Compliance review by HMRC. Our experience in these areas reveals a common set of recurring issues.

- 1. Incomplete mileage records**
Records need to show the date, start and end point, who visited and why plus an authorising signature. Challenges by HMRC can lead to substantial recoveries of tax and NICs.
- 2. Home phone, personal mobile phone and broadband**
Tax relief is only available for identified business calls. The test for tax relief for home broadband is very hard to meet.
- 3. Retirement gifts**
The gift is usually a benefit in kind and should come with a P11D.
- 4. Ex Gratia, termination payments and payments in lieu of notice**
When an employee leaves the tax rules are complex. Do not assume the payment is tax free- see page three.
- 5. Poor record keeping**
The backbone of any claim for tax relief is record keeping. HMRC are quick to charge tax on unsupported expenditure.
- 6. Employee food and drink and entertaining**
Offsite meals and drinks, unless they are business entertaining are a benefit in kind. Under certain circumstances meals and sandwiches at the office are also a benefit.
- 7. P11D reporting**
At 5 April it can be easy to forget irregular benefits paid during the year to employees. HMRC will root them out if they make a visit.
- 8. Fuel**
As fuel for private use is a very expensive benefit in kind, many employers do not provide it but the whole year's benefit charge will apply if even £1 of private fuel has been paid. Have you got the records to show that no private fuel has been provided?

- 9. Bits and bobs**
Occasionally items go through the business which are actually private expenditure. HMRC is very good at picking up these items and rolling up a tax and NICs bill for them.
- 10. Vans**
Vans have a special tax free status if they are used purely for work and commuting. Very minor private use is allowed, but in order to preserve this tax free status, employees have to keep a mileage log and employers need to keep a check on their fleet and be able to show to HMRC that private use is kept within the rules.

If you are concerned about any of the above or any other employee related expenditure, please get in touch.



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Salary sacrifice - what you need to know

Following the recent HMRC Consultation on the future of salary sacrifice, the Autumn Statement provided some clarity on the way ahead.

The devil is often in the detail, and we await publication of the full background on 5 December. However, what we do know is that the Chancellor has ringfenced a number of salary sacrifice arrangements, which will be allowed to continue without change. These are pension contributions, childcare, cycle to work and the ability to purchase additional annual leave. Company cars will also be protected to a degree – cars with co2 emissions of up to 75g/km can continue as before, along with electric vehicles and hybrids.

All other salary sacrifice benefits will lose Income Tax relief and incur a charge to Employers' Class 1A NIC. From 6 April 2017 HMRC will tax the higher of the salary sacrifice and any benefit in kind chargeable on the benefit provided.

However, arrangements already in place at April 2017 will be protected from the changes until April 2018, and in the case of company cars, accommodation and school fees, until April 2021. This provides a useful opportunity to get arrangements in place prior to April 2017 in order to maximise the benefit available.



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Your business is our business